



## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 274

[FNS 2016-0074]

RIN 0584-AE02

### **Supplemental Nutrition Assistance Program (SNAP): 2008 Farm Bill Provisions on Clarification of Split Issuance; Accrual of Benefits and Definition Changes: Delay of Implementation Date for Certain Provisions**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule delays from September 24, 2021, until September 24, 2022, the implementation date of certain provisions of the final rule entitled, “Supplemental Nutrition Assistance Program (SNAP): 2008 Farm Bill Provisions on Clarification of Split Issuance; Accrual of Benefits and Definition Changes” (“the Final Rule”), which was published in the Federal Register on August 24, 2020 and became effective on September 23, 2020. The original implementation date for the final rule was September 24, 2021. For reasons explained below, mostly arising from the burden on State agency resources caused by the COVID-19 pandemic, FNS is changing the implementation date for certain provisions of the final rule to September 24, 2022, effective immediately.

**DATES:** *Effective date:* This interim final regulation regarding the delay of the implementation date is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comments due date:* To be considered, written comments on this interim final rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Implementation date:* State agencies must fully implement the requirements at 7 CFR parts 274.2(h) and 274.2(i)(1)-(3) as established by the final rule published August 24, 2020 (85 FR 52025), no later than September 24, 2022.

**ADDRESSES:** Comments may be submitted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the instructions for submitting comments electronically. Comments may be submitted via e-mail to [Shanta.Swezy@usda.gov](mailto:Shanta.Swezy@usda.gov). You may also mail comments to: Shanta Swezy, Chief, Issuance Support Branch, Retailer and Issuance Policy and Innovation Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), 1320 Braddock Place, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Shanta Swezy at the address above or (703) 305-2238, [Shanta.Swezy@usda.gov](mailto:Shanta.Swezy@usda.gov).

**SUPPLEMENTARY INFORMATION:** The final rule, in part, amended SNAP regulations at 7 CFR 274.2(h) and 274.2(i)(1)-(3) to implement provisions of the Food, Conservation and Energy Act of 2008 (P.L. 110–234) (2008 Farm Bill) and the Agriculture Improvement Act of 2018 (P.L. 115-334) (2018 Farm Bill) regarding storage of benefits off-line and permanent expungement of unused benefits. Due to the extenuating circumstances of COVID-19, State agencies have been focusing efforts on the programming necessary for the 15 percent Thrifty Food Plan increase authorized by the Consolidated Appropriations Act, 2021 (P.L 116-133), Pandemic EBT (P-EBT) authorized by the Families First Coronavirus Response Act (FFCRA, P.L. 116-127), and Emergency Allotments authorized by FFCRA, which have been essential to providing households additional support during the COVID-19 pandemic. As such, the September 24, 2021 implementation date poses administrative and management information system challenges for State agencies, and efforts to meet it would divert resources from other, more pressing programs and the nutrition assistance that they provide at this critical time. The new implementation date of September 24, 2022, as established by this interim final rule, is intended to result in more effective and efficient implementation of the new requirements for

offline storage and expungement, and enable State agencies to better manage any cost adjustments arising from the changes.

### **Administrative Procedure Act Statement**

Pursuant to the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). USDA recognizes that courts have held that the good cause exception to notice and comment rulemaking is to be narrowly construed and only reluctantly countenanced.

Following these principles, the Department finds for good cause that notice and public comment is impracticable, unnecessary, and contrary to the public interest for this rule. Due to the extenuating circumstances of the COVID-19 pandemic, State agencies have intently been working to meet multiple essential pandemic-related requirements. This has limited their ability to implement the final rule, necessitating an implementation date change for certain provisions of the final rule. A notice and public comment period would be impracticable because it would consume time before certainty about the implementation date could be achieved, when State agencies need to know immediately whether the September 24, 2021 implementation date still stands, as it is fast approaching. During a notice and comment period, States would face challenges regarding how best to use their resources. States likely would divert resources from other pandemic-related requirements to ensure they can meet an implementation date that might, after the notice and comment period, not be sustained. Accordingly, the purpose of delaying the implementation date—averting the States’ diversion of resources—would be impeded by waiting until after a notice and comment period to determine if the implementation date would be delayed. In addition, being informed of the implementation date change is critical to State agency planning and allocation of resources, and having to divide those resources between COVID-19 needs and implementation of this final rule could potentially compromise important

State efforts related to COVID-19. Thus, it is in the best interest of the public to proceed to change the implementation date immediately without notice-and-comment rulemaking.

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Food and Nutrition Service

[FR Doc. 2021-16123 Filed: 7/28/2021 8:45 am; Publication Date: 7/29/2021]